

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KRISTINA M. BEATTY

Appeal No. 95-2990
Application 08/147,907¹

ON BRIEF

Before and THOMAS, HAIRSTON and CARMICHAEL, ***Administrative Patent Judges.***

CARMICHAEL, ***Administrative Patent Judge.***

DECISION ON APPEAL

¹ Application for patent filed November 3, 1993. According to appellant, this application is a continuation of Application 07/969,557 filed October 30, 1992, which is a continuation of Application 07/750,955 filed August 28, 1991, both abandoned.

This is an appeal from the final rejection of Claims 22-25, which constitute all the claims remaining in the application.

Claim 25 reads as follows:

25. A method for playing musical notes utilizing a plurality of hand bells, each said hand bell being marked by a color corresponding to the particular musical note produced by said hand bell, and a plurality of means for displaying only a single combination of said colors corresponding to a single musical note or a single musical chord, said plurality of means for displaying comprising a deck of cards, each said card having a front side and a back side and wherein at least one said color is displayed on said front side; said method comprising the steps of:

a. displaying said front side of a first said card from said deck for a first period of time while not displaying any other said card in said deck during said first period of time;

b. activating each said hand bell having a color corresponding to said combination of said colors displayed on said first card and playing said note during said first period of time;

c. ceasing to display said first card immediately after said first period of time lapses;

d. ceasing to activate each said hand bell having a color corresponding to said combination of said colors displayed on said first card immediately after said first card ceases to be displayed;

e. displaying said front side of a second said card from said deck for a second period of time while not displaying any other said card in said deck during said second period of time;

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f. activating each said hand bell having a color corresponding to said combination of said colors displayed on said second card and playing said note during said second period of time;

g. ceasing to display said second card immediately after said second period of time lapses; and

h. ceasing to activate each said hand bell having a color corresponding to said combination of said colors displayed on said second card immediately after said second card ceases to be displayed.

The Examiner's Answer cites the following prior art:

Chute 1962	3,027,794	Apr. 3,
Sasaki et al. (Sasaki) 1980 Searing 11, 1989	4,213,372 4,819,539	Jul. 22, Apr.

OPINION

Claim 25

Claim 25 involves a method for playing a sequence of musical notes on hand bells by displaying a sequence of cards color-coded to match colors on the hand bells. Claim 25 stands rejected under 35 U.S.C. § 103 as being unpatentable over Searing in view of either Chute or admitted prior art.

Searing discloses a method of teaching a student to play a musical instrument. A teacher holds up a sequence of cards such as those shown in Figure 3. Each card is shown

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having a symbol corresponding to a musical note. A student plays on a musical instrument the note represented by the displayed card. Column 8, lines 50-61. In effect, a sequence of cards is used as the written score.

Chute teaches that a written score should have each note indicated by a different color so that a student can easily learn to play color-coded hand bells. Column 2, line 72 through column 3, line 4.

The admitted prior art teaches a method similar to Chute in which a teacher points to the colored notes on a large chart and the students play the color-coded bells corresponding to the colored notes. Specification at 2, lines 12-18.

According to the examiner, one of ordinary skill in the art was motivated to use colors instead of symbols on Searing's cards in order to easily play bells as suggested by Chute. Examiner's Answer at 5. Appellants argue that Searing's method is only applicable after basic scale instruction has been completed, which is not in accordance with the limitations required in Claim 25. Appeal Brief at 8. We agree with the examiner.

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The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. ***In re Fritch***, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992). In the present case, the prior art suggests the desirability of the modification.

Chute suggests using color-coded bells for playing a sequence of notes because such bells are easy to play and easily adapted. Column 1, lines 17-42. Thus, the prior art as a whole suggested using color-coded bells as the "other musical instrument" contemplated by Searing's card method. Searing at column 8, lines 50-61. Replacing Searing's symbols with colors that match color-coded bells as suggested by Chute or the admitted prior art results in the subject matter of Claim 25.

The affidavits of Carlington and Winston do not tip the balance in favor of patentability. Winston speaks of dramatic results but does not say whether they were unexpected. Carlington says that the claimed teaching system is not commercially available and that she would buy it if it

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were. However, there is no evidence of a long felt need in the market.

Thus, the rejection of Claim 25 will be sustained.

Claims 22 and 23

Claims 22 and 23 cover a music teaching system in which at least one card has a plurality of colors on its face. These claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Searing in view of either Chute or admitted prior art.

According to the examiner, the ordinary artisan would have been motivated to modify Searing by including more than one color indicia on a single card for the purpose of producing more than one note. Examiner's Answer at 5. Appellants argue that Searing teaches away from multiple indicia. Appeal Brief at 9. We agree with appellants.

Searing teaches that multiple notes correspond to multiple cards each with a single indicium, not to a single card with multiple indicia. Column 8, lines 57-61. The examiner has identified nothing in the cited art suggesting the opposite approach as claimed.

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Therefore, we will not sustain the rejection of
Claims 22 and 23.

Claim 24

Claim 24 covers a music teaching system in which a
computer screen displays a sequence of colors that match
color-coded handbells. The claim stands rejected under 35
U.S.C. § 103 as being unpatentable over Sasaki in view of
either Chute or admitted prior art.

According to the examiner, it should be readily
apparent to one skilled in the art that Sasaki can be adapted
to be used with hand bells. Examiner's Answer at 6.
Appellants argue that Sasaki's apparatus plays the note
displayed and does not teach displaying an indicium to elicit
a note from an instrument player. Appeal Brief at 15. The
examiner responds by pointing to Sasaki's Background section.
Examiner's Answer at 10. We agree with appellants.

Sasaki's Background describes a prior method for
learning music in which a music tune was reproduced using
musical instruments. Sasaki says that such methods had
difficulties that are overcome by Sasaki's method in which the
music is reproduced not by instruments but by a computer. The

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computer displays in staff notation the music being played by the computer.

We disagree with the examiner's finding that Sasaki suggests displaying an indicium on a computer screen to elicit a note from an instrument player. Because that finding is at the heart of the rejection and the other references do not overcome the deficiency, we will not sustain the rejection of claim 24.

CONCLUSION

The rejection of claim 25 is sustained. The rejection of claims 22-24 is not sustained.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS)	
Administrative Patent Judge)	
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KENNETH W. HAIRSTON)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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